

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BLACK LOVE RESISTS IN THE RUST, et al.,

Plaintiffs,

v.

Case No.: 1:18-cv-719

CITY OF BUFFALO, N.Y., et al.

Defendants.

CONSENT MOTION TO MODIFY THE SCHEDULING ORDER

With the consent of Plaintiffs, Defendants respectfully move to amend the scheduling order to set a deadline for a motion to determine class certification and to extend all other deadlines by three months. *See* Dkt. 132, 135. The proposed schedule is as follows:

Deadline	Current Date	Modified Date
Completion of fact discovery	June 6, 2022	September 6, 2022
Motions to compel discovery	June 6, 2022	September 6, 2022
<i>Class certification motion</i>	<i>n/a</i>	<i>September 23, 2022</i>
Service of initial expert reports	August 1, 2022	November 1, 2022
Service of rebuttal expert reports	August 30, 2022	November 30, 2022
Completion of all expert discovery	September 30, 2022	December 30, 2022
Dispositive Motions	October 24, 2022	January 24, 2023

In support of this motion, Defendants state:

Three-Month Extension

1. Under the present schedule, the deadline for completion of fact discovery and any accompanying motions to compel is June 6, 2022. The Court has set additional deadlines, leading to a dispositive motion deadline of October 24, 2022.

2. On February 25, 2022, Defendants hired additional counsel due to the complexity of the case and significant discovery demands.

3. Defendants continue to produce ESI, but have not yet completed their production. For example, on March 22, 2022, Defendants produced over 900 additional email documents sent by Patrick Roberts which had not been included in their previous ESI productions. On April 15, 2022, Defendants produced over 4,000 Erie Crime Analysis Center (ECAC) e-mail documents, pursuant to the January 12, 2022 discovery order. See Dkt. 131, ¶ 6.

4. The parties continue to proceed with depositions and have conducted the depositions of Kevin Brinkworth, Michael Quinn, Patrick Roberts, Thomas Whelan, and Lance Russo over the past two months, with the depositions of Roberts and Whelan to continue on additional dates in May to be determined.

5. Plaintiffs have noticed the depositions of Danielle Morgera for May 26 and Kevin Helfer for June 16, and they anticipate noticing additional depositions as they continue to review the discovery that has issued so far.

Class Certification

6. Federal Rule of Civil Procedure 23(c) requires the court to determine the class certification question “at an early practicable time.”

7. The Local Rules require a deadline for moving for class certification. *See* Local Rule 16(b)(3)(G) (requiring the parties to discuss the timing of, and briefing schedule for, a class certification motion); Local Rule 16(b)(4)(C) (stating that the scheduling order should include deadlines for the items discussed in Rule 16(b)(3)(G)); Local Rule 23(c) (requiring the party seeking class certification to move by the deadline set in the scheduling order).¹

8. The current Case Management Order does not set a separate deadline for the plaintiff to move for class certification.

9. Resolving the class certification question prior to the deadline for dispositive motions would serve the interests of justice and judicial efficiency.

10. Expert discovery is not necessary to resolve the class certification question.

11. For the reasons set forth above, good cause exists to set a deadline for class certification on September 23, 2022.

12. Accordingly, Defendants, with the consent of Plaintiffs, respectfully request the modifications set forth above.

¹ At the time that this Court issued the Case Management Order, the Local Rules were not as clear on this issue. Although Local Rule 23(c) and (d) clearly contemplated the existence of a deadline for class certification motions, Local Rule 16 did not contain the explicit instructions to schedule the class certification motion. The March 1, 2022 amendments to the Local Rules now expressly require a specific deadline for the class certification motion. A redline showing the changes is available at: <https://www.nywd.uscourts.gov/sites/nywd/files/FINAL%20PRELIMINARILY%20APPROVED%20AMENDMENTS%20FOR%20PUBLICATION.pdf>

Dated: Buffalo, New York
May 13, 2022

HODGSON RUSS LLP
Attorneys for Defendants

By: s/David A. Short
Hugh M. Russ, III, Esq.
David A. Short, Esq.
Peter A. Sahasrabudhe, Esq.
Guaranty Building
140 Pearl Street – Suite 100
Buffalo, New York 14202
Telephone: 716-856-4000
hruss@hodgsonruss.com
dshort@hodgsonruss.com
psahasra@hodgsonruss.com